

SUBSTITUTE APPEAL BRIEF UNDER 37 C.F.R. § 41.37

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| <u>1. REAL PARTY IN INTEREST</u> | 2 |
| <u>2. RELATED APPEALS AND INTERFERENCES</u> | 3 |
| <u>3. STATUS OF THE CLAIMS</u> | 4 |
| <u>4. STATUS OF AMENDMENTS</u> | 5 |
| <u>5. SUMMARY OF CLAIMED SUBJECT MATTER</u> | 6 |
| <u>6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL</u> | 9 |
| <u>7. ARGUMENT</u> | 10 |
| <u>8. CLAIMS APPENDIX</u> | 23 |
| <u>9. EVIDENCE APPENDIX</u> | 26 |
| <u>10. RELATED PROCEEDINGS APPENDIX</u> | 27 |

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Peter R. Anderson et al. Examiner: Paul A. D'Agostino

Serial No.: 10/658,975 Group Art Unit: 3714

Filed: September 10, 2003 Docket: 1842.041US1

For: GAMING MACHINE WITH AUDIO SYNCHRONIZATION FEATURE

SUBSTITUTE APPEAL BRIEF UNDER 37 CFR § 41.37

Mail Stop Appeal Brief- Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Substitute Appeal Brief is presented in support of the Appeal Brief filed February 24, 2009 and the Notice of Appeal to the Board of Patent Appeals and Interferences, filed on October 24, 2008, from the Final Rejection of claims 10-22 of the above-identified application, as set forth in the Final Office Action mailed on July 24, 2008.

The Appellant has paid the fees associated with the previous Notice of Appeal and Appeal Brief, and believes that no further fees are due at this time. If further fees are in fact due, the Commissioner of Patents and Trademarks is hereby authorized to charge Deposit Account No. 19-0743 for any required amount. Appellant respectfully requests consideration and reversal of the Examiner's rejections of pending claims.

1. REAL PARTY IN INTEREST

The real party in interest of the above-captioned patent application is the assignee, WMS GAMING INC.

2. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellant that will have a bearing on the Board's decision in the present appeal.

3. STATUS OF THE CLAIMS

The present application was filed on September 10, 2003 with claims 1-18. In the Amendment and Response filed on June 16, 2008 to the Non-Final Office Action mailed on January 15, 2008, claims 1-9 were canceled and claims 19-22 were added. A Final Office Action was mailed on July 24, 2008 rejecting claims 10-22. Claims 10-18 stand twice rejected, remain pending, and provide a basis for the appeal of claims 10-22 in the present Appeal.

4. STATUS OF AMENDMENTS

No amendments have been made subsequent to the Final Office Action dated July 24, 2008.

5. SUMMARY OF CLAIMED SUBJECT MATTER

Aspects of the present inventive subject matter include, but are not limited to, a gaming machine with audio synchronization features.

INDEPENDENT CLAIM 10

10. A method of conducting a wagering game, comprising:
- storing an audio file associated with the wagering game in a memory structure, the audio file including a first data structure that defines a marker and a second data structure that defines an audio sequence [e.g., p. 6, line 33 to p. 7, line 4; FIG. 3 at 30, 34, 36, and 40; FIG. 5 at 52 and 54];
 - reading the first data structure [e.g., p. 7, lines 13-14; FIG. 4 at 44]; and
 - playing the audio sequence from the second data structure, including playing the sequence and initiating a wagering game-related event in response to detecting a position in the audio sequence corresponding to the marker, the event being pre-associated with the marker [e.g., p. 7, lines 11-20; FIG. 4].

INDEPENDENT CLAIM 15

15. A method of conducting a wagering game, comprising:
- storing an audio file associated with the wagering game in a memory structure, the audio file including a first data structure that defines a plurality of markers and a second data structure that defines a plurality of audio sequences [e.g., p. 6, line 33 to p. 7, line 4; FIG. 3 at 30, 34, 36, and 40; FIG. 5 at 52 and 54]; and
 - playing the audio sequences from the second data structure, including successively playing the audio sequences and initiating game-related events pre-associated with the respective audio sequences in response to detecting the position among the audio sequences corresponding to each respective marker in the first data structure [e.g., p. 7, lines 11-20; FIG. 4].

INDEPENDENT CLAIM 21

21. A method of conducting a wagering game, comprising:
- accessing a single audio file associated with the wagering game, the audio file including a marker and an audio sequence [e.g., p. 6, line 33 to p. 7, line 4; FIG. 3 at 30, 34, 36, and 40; FIG. 5 at 52 and 54];
 - reading the marker from the audio file, the marker identifying a position in the audio sequence at which a game related event is to be initiated [e.g., p. 7, lines 11-20; p. 7, lines 24-27; FIGS. 4 and 5];
 - playing the audio sequence [e.g., p. 7, lines 11-20; p. 7, lines 24-27; FIGS. 4 and 5]; and
 - detecting the position in the audio sequence corresponding to the marker and initiating the game-related event corresponding to the marker [e.g., p. 7, lines 11-20; p. 7, lines 24-27; FIGS. 4 and 5].

INDEPENDENT CLAIM 22

22. A method of conducting a wagering game, comprising:
- accessing a single audio file associated with the wagering game, the audio file including a first data structure that defines a cue point, a second data structure that defines an audio sequence, and a third data structure that defines an association table, the association table associating a cue point with a game-related event [e.g., p. 6, line 33 to p. 7, line 4; FIG. 3 at 30, 34, 36, 40, and illustrated table; FIG. 5 at 52, 54, and illustrated table];
 - reading the cue point from the first data structure in the audio file, the cue point identifying a position in the audio sequence at which the game related event is to be initiated [e.g., p. 7, lines 11-20; p. 7, lines 24-27; FIGS. 4 and 5];
 - playing the audio sequence [e.g., p. 7, lines 11-20; p. 7, lines 24-27; FIGS. 4 and 5]; and
 - while playing the audio sequence, detecting the position in the audio sequence corresponding to the cue point, accessing the association table to determine the game related event associated with the cue point, and initiating the game related event as specified in the association table [e.g., p. 7, lines 11-20; p. 7, lines 24-27; FIGS. 4 and 5].

DEPENDENT CLAIM 11

11. The method of claim 10, wherein the memory structure includes an association table having the marker and the event associated with the marker, and further including referring to the association table to identify the event to be initiated in response to detecting the marker [e.g., p. 6, lines 20-22; p. 6, line 30 to p. 7, line 4; p. 7, lines 21-34; FIG. 3 at illustrated table; FIG. 5 at illustrated table].

DEPENDENT CLAIM 16

16. The method of claim 15, wherein the memory structure includes an association table having the markers and the events associated with the respective markers [e.g., p. 6, lines 20-22; p. 6, line 30 to p. 7, line 4; FIG. 3 at illustrated table; FIG. 5 at illustrated table], and further including referring to the association table to identify the events to be initiated in response to detecting the respective markers [e.g., p. 6, lines 20-22; p. 6, line 30 to p. 7, line 4; p. 7, lines 21-34].

This summary is presented in compliance with the requirements of 37 CFR § 41.37(c)(1)(V), mandating a “concise explanation of the subject matter defined in each of the independent claims involved in the appeal . . .” Nothing contained in this summary is intended to change the specific language of the claims described, nor is the language of this summary to be construed so as to limit the scope of the claims or their equivalents in any way.

Therefore, the preceding summary does not provide an exhaustive or exclusive view of the present subject matter, and Appellant refers the Board to the appended claims and their legal equivalents for a complete statement of the invention. Page and line numbers or other references to Appellant’s specification are given are exemplary in nature and not intended to be an exhaustive listing of each and every location where the particular subject matter can be found in the application.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- I) Claims 10-12, 14-17, and 21-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith (U.S. 5,701,511) in view of Brossard (U.S. 6,302,790).
- II) Claims 13 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith in view of Brossard and further in view of Sato et al. (U.S. 5,588,096; hereinafter “Sato”)
- III) Claims 19-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Brossard and further in view of Sato and further in view of Sagawa et al. (U.S. 5,734,923; hereinafter “Sagawa”)
- IV) Claims 10-13, 15-18, and 21-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Seelig et al. (U.S. Pub. No. 2004/0147300; hereinafter “Seelig”) in view of Meier et al. (U.S. 6,415,303; hereinafter “Meier”).
- V) Claims 19-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Seelig in view of Meier and further in view of Sagawa.

7. ARGUMENT

A) The Applicable Law under 35 U.S.C. §103

As discussed in *KSR International Co. v. Teleflex Inc. et al.* (U.S. 2007), the determination of obviousness under 35 U.S.C. § 103 is a legal conclusion based on factual evidence. See *Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.*, 411 F.3d 1332, 1336-37 (Fed.Cir. 2005). The legal conclusion, that a claim is obvious within § 103(a), depends on at least four underlying factual issues set forth in *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966): (1) the scope and content of the prior art; (2) differences between the prior art and the claim at issue; (3) the level of ordinary skill in the pertinent art; and (4) evaluation of any relevant secondary considerations.

The Examiner has the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d, 488, 20 USPQ2d 1438 (Fed. Cir. 1991)).

Additionally, there must be a rational underpinning grounded in evidence to support the legal conclusion of obviousness. See *In re Kahn*, 78 USPQ2d 1329 (Fed. Cir. 2006), which states that, “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn* citing *In re Lee*, 61 USPQ2d 1430 (Fed. Cir.2002). Additionally, “mere identification in the prior art of each element is insufficient to defeat the patentability of the combined subject matter as a whole.” *In re Kahn*.

A showing of “teaching, suggestion, or motivation” to combine the prior art to meet the claimed subject matter could provide a helpful insight in determining whether the claimed subject matter is obvious under 35 U.S.C. § 103(a). *KSR* at p. 14, line 24 through p. 15, line 8.

The court in *KSR* made it clear, however, that the “teaching, suggestion, or motivation” (TSM) test is only one tool that can be used to determine obviousness, noting that the Examiner or court simply has to “determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *Id.* at p. 14, lines 5-17. The court in *KSR* further noted that “to facilitate review, this analysis [supporting a rejection under 35 U.S.C. § 103(a)] should be made explicit.” *Id.*

Specifically, the Office Action must provide specific, objective evidence of record for a finding of a suggestion or motivation to combine reference teachings and must explain the reasoning by which the evidence is deemed to support such a finding. *See KSR* at p. 14, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006); *In re Sang Su Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002).

Even if adding an element to a prior art was obvious, that does not establish that the claimed invention encompasses obvious subject matter. *KSR* at p. 19, ¶ 1. Instead, following factors can still be considered to determine whether a claimed invention at issue is nonobvious under 35 U.S.C. § 103(a): (1) whether the claimed invention yields more than predictable results (*id.* at p. 12, ¶¶ 1-2); (2) whether there is technical difficulties in combining the prior arts, requiring substantial reconstruction or redesign (*id.* at p. 19, ¶ 1); (3) whether the prior art cannot be upgraded to or teaches away from the claimed invention (*id.* at p. 22, ¶ 2); (4) whether the prior arts have secondary factors which may ‘dislodge’ obviousness – “long felt and unresolved needs”, “the failure of others”, “commercial success” (*id.* at p. 2, ¶ 3); and (5) whether the prior arts require elements of the invention to be read using hindsight to be relevant to the claimed invention (*id.* at p. 17, ¶ 3).

Therefore, the test for obviousness under §103 must take into consideration the invention as a whole; that is, one must consider the particular problem solved by the combination of elements that define the invention. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir.1985). The Examiner must, as one of the inquiries pertinent to any obviousness inquiry under 35 U.S.C. §103, recognize and consider not only the similarities but also the critical differences between the claimed invention and the prior art. *In re Bond*, 910 F.2d 831, 834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990), *reh’g denied*, 1990 U.S. App. LEXIS 19971 (Fed. Cir.1990). The fact that a reference teaches away from a claimed invention is

highly probative that the reference would not have rendered the claimed invention obvious to one of ordinary skill in the art. *Stranco Inc. v. Atlantes Chemical Systems, Inc.*, 15 USPQ2d 1704, 1713 (Tex. 1990). When the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious. *Id.* at p. 4 citing *United States v. Adams*, 383 U.S. 39, 51-51 (1966). Additionally, critical differences in the prior art must be recognized (when attempting to combine references). *In re Bond*.

In order to take into account the inferences which one skilled in the art would reasonably make, the examiner must ascertain what would have been obvious to one of ordinary skill in the art at the time the invention was made. *M.P.E.P.* § 2141.03 (citing *Environmental Designs, Ltd. v. Union Oil Co*, 713 F.2d 693, 218 USPQ 865 (Fed. Cir. 1983), *cert. denied*, 464 U.S. 1043 (1984)).

The examiner must step backward in time and into the shoes worn by the hypothetical “person of ordinary skill in the art” when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention “as a whole” would have been obvious at that time to that person. Knowledge of Appellants’ disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the “differences,” conduct the search and evaluate the “subject matter as a whole” of the invention. The tendency to resort to “hindsight” based upon Appellants’ disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

M.P.E.P. § 2141.03.

B) The References

Smith (US 5,701,511): relates to a method and apparatus for maintaining synchronization and sequencing between an audio track and other components of a multimedia work (see Smith at Abstract).

Brossard (US 6,302,790): relates to a gaming device in which a plurality of possible prizes include an audio or motion picture output of a celebrity performance (*see* Brossard at Abstract).

Seelig et al. (US 2004/0147300): relates to an animated gaming system that includes an animated figure used to indicate at least one prize display (*see* Seelig at Abstract).

Meier et al. (US 6,415,303): relates to using a composite description to describe the functionality of an interactive multimedia application for use on an interactive network (*see* Meier at Abstract).

C) Application of the Law to the Rejected Claims

C.1. The rejection of claims 10-12, 14-17, and 21-22 under 35 U.S.C. § 103(a) as being obvious using Smith in view of Brossard.

Concerning independent claims 10 and 21

Appellant respectfully submits that one or more elements of these independent claims are not disclosed by the cited references. In particular, Appellant cannot find in the cited portions of Smith or Brossard, any disclosure, teaching or suggestion of “storing an audio file associated with the wagering game in a memory structure, the audio file including a first data structure that defines a marker and a second data structure that defines an audio sequence” as presently required by claim 10 and similarly recited in claim 21.

The Final Office Action relies on Smith’s reference to the audio standard as provided in Smith at FIG. 4 and associated text to teach an audio sequence and audio markers in a single file. In particular, Smith states:

To avoid loss of synchronization and sequencing of audio data and other data, the conventional scheme embeds timing mark ticks 54 in the audio data in a track 50, a portion of which is shown in FIG. 4 (prior art). In track 50, blocks of audio data 52 alternate with timing mark ticks 54, thereby enabling CPU 23 to reference the portion of the audio data currently playing so that a corresponding other portion of the multimedia work will execute concurrently.

Smith at col. 6, lines 16-23. However, Smith clearly teaches away from the use of this type of arrangement, stating:

While this prior art technique maintains the audio and other data in synchronization, it makes the audio track on a CD-ROM unplayable on a conventional audio CD, since timing mark ticks 54 can not be stripped from the audio data by a conventional audio CD player. In contrast to the prior art approach graphically illustrated in FIG. 4, the present invention uses a technique shown in FIG. 5 to maintain synchronization between audio data recorded in a track 56 in accordance with the Redbook standard and a separate timing and command track 72.

Smith at col. 6, lines 27-38. Instead, Smith's timing and command track 72 is not included in an audio file with the audio track 56 (as shown by FIG. 5 and explained in detail at col. 6, line 51 to col. 7, line 23). The combination of the timing and command track 72 and the audio track 56 is apparently what Smith is attempting to design around. As explained with specificity at column 1, lines 35-43 and at column 2, lines 20-60, Smith apparently uses two separate data streams, which are accessed from two separate files stored on a CD-ROM. One data stream includes an audio signal and the second stream controls the non-audio elements using "timing data that specify a plurality of temporal pairs." Smith at col. 2, lines 24-27. The audio "stream of data comprises audio data, including either Redbook data, MIDI data, or WAV data." Smith at col. 2, lines 59-60.

In contrast, Appellant's implementation uses a single audio file, e.g., a Wave file, to store both the audio sequence and the audio markers (also referred to as cue points). Appellant's claimed methods have no need to keep track of a second file and do not recite a second stream of data, as Smith requires. Instead, the marker data is read from a data structure included within the audio file itself. This marker data, while previously only used for controlling audio sequence playback (e.g., looping), is expanded to control game-related events, as recited in Appellant's claims.

Moreover, Appellant's claim 10 further recites:

reading the first data structure; and

playing the audio sequence from the second data structure, including playing the sequence and initiating a wagering game-related event in response to detecting a position in the audio sequence corresponding to the marker, the event being pre-associated with the marker.

This order of operations is clearly not disclosed, taught, or suggested by Smith with reference to FIG. 4 of Smith. In particular, Smith states “[t]hese timing marks serve as references for synchronizing other concurrent elements of the multimedia work with the audio track.” Smith at col. 1, lines 38-41. In particular, the timing marks referred to in Smith are not read prior to the playing of the audio sequence. Instead, they are apparently read as the audio data stream is being processed (e.g., played). In contrast, Appellant’s “first data structure that defines a marker” is read prior to playing the “second data structure that defines an audio sequence” and includes a position that corresponds to the marker. In fact, the portion of Smith relied upon to reject this claim (e.g., FIG. 4 and discussion) does not “play[] the [audio] sequence and initiat[e] a wagering game-related event in response to detecting a position in the audio sequence corresponding to the marker,” but rather detects the marker itself.

Therefore, because Smith and Brossard fail to disclose all of the elements of these claims, and because there would be no motivation to modify Smith in the manner the Final Office Action suggests, Appellant respectfully submits that there is no *prima facie* case of obviousness with respect to claims 1 and 21. As such, Appellant respectfully requests reversal of the rejections of these claims.

Concerning independent claim 15

Appellant respectfully submits that one or more elements of this independent claim are not disclosed by the cited references. In particular, Appellant cannot find in the cited portions of Smith or Brossard, any disclosure, teaching or suggestion of “storing an audio file associated with the wagering game in a memory structure, the audio file including a first data structure that defines a plurality of markers and a second data structure that defines a plurality of audio sequences” as presently required by claim 15.

As discussed above, the Final Office Action apparently relies on Smith's FIG. 4 to assertedly teach the first and second data structures. However, it is clear from Smith that the timing mark ticks 54 included in the audio track 50 are not included in "a first data structure that defines a plurality of markers," as recited in claim 15.

Moreover, even if, *in arguendo*, Smith's timing mark ticks 54 are considered as being contained in a "first data structure," game-related events are not initiated in response to detecting the position among the audio sequences corresponding to each respective marker in the first data structure as the audio sequences are played from the second data structure. Instead, for Smith's timing mark ticks 54 to be considered as being contained in a "first data structure," they would arguably be contained in the track 50. However, track 50 is also the data structure that would necessarily include the audio data 52. As such, there could not be separate first and second data structures, as recited in claim 15.

Moreover, as discussed above, Smith does not "successively play[] the audio sequences and initiat[e] game-related events pre-associated with the respective audio sequences in response to detecting the position among the audio sequences corresponding to each respective marker in the first data structure," as recited in claim 15, but instead detects the markers itself.

Moreover, as discussed above, it would not be obvious to modify Smith to include the control and command track 72 in the audio track 56, because Smith teaches away from such a combination.

Therefore, because Smith and Brossard fail to disclose all of the elements of claim 15, and because there would be no motivation to modify Smith in the manner the Final Office Action suggests, Appellant respectfully submits that there is no *prima facie* case of obviousness with respect to claim 15. As such, Appellant respectfully requests reversal of the rejection of this claim.

Concerning independent claim 22

Appellant respectfully submits that one or more elements of this independent claim are not disclosed by the cited references. In particular, Appellant cannot find in the cited portions of Smith or Brossard, any disclosure, teaching or suggestion of "accessing a single audio file associated with the wagering game, the audio file including a first data structure that defines a

cue point, a second data structure that defines an audio sequence, and a third data structure that defines an association table, the association table associating a cue point with a game-related event,” as presently required by claim 22.

Apparently, the Final Office Action asserts that Appellant’s “association table associating a cue point with a game-related event” is inherent. In particular, the Final Office Action states:

...wherein the memory structure further including an association table (known audio tracks necessary must have an association structure or coding (third data structure) in memory for the timing marks to be pre-associated with event whereby the marks serve as “references” (Col. 1 Line 39) to link to corresponding functions wherein “These timing marks serve as references for synchronizing other concurrent elements of the multimedia work with the audio track” Col. 1 Lines 38-41)...

Final Office Action of July 24, 2008 at p. 3. Appellant respectfully disagree with the Final Office Action’s assertion that “audio tracks necessary (*sic*) must have an association structure.”

In particular, Appellant submits that the timing marks referred to in Smith may simply be used by an external process to synchronize the audio data with some multimedia work. This type of operation is directly referenced in Smith at col. 6, lines 16-27. In such an arrangement, the external process simply refers to the timing marks to synchronize its data with the audio data. Hence, the association may be kept by the external process and data structure associating the timing marks with the multimedia work would also be maintained by the external process. In this case, there would not be any need to maintain an association table in the audio file, as recited in claim 22. Thus, because alternative implementations are possible, it is clearly neither necessary nor inherent that “a single audio file ... includ[es] a first data structure that defines a cue point, a second data structure that defines an audio sequence, and a third data structure that defines an association table, the association table associating a cue point with a game-related event,” as recited in claim 22.

Moreover, as discussed above, Smith fails to disclose, teach, or suggest the order of operations in the use of the separate data structures. In particular, claim 22 includes “reading the cue point from the first data structure” and then “playing the audio sequence” and finally “while playing the audio sequence, detecting the position in the audio sequence corresponding to the cue

point, accessing the association table to determine the game related event associated with the cue point, and initiating the game related event as specified in the association table.” In fact, the portion of Smith relied upon to reject this claim (e.g., FIG. 4 and discussion) does not detect the position in the audio sequence corresponding to the marker, but rather detects the marker itself.

Moreover, as discussed above, it would not be obvious to modify Smith to include the control and command track 72 in the audio track 56, because Smith teaches away from such a combination.

Therefore, because Smith and Brossard fail to disclose all of the elements of claim 22, and because there would be no motivation to modify Smith in the manner the Final Office Action suggests, Appellant respectfully submits that there is no *prima facie* case of obviousness with respect to claim 22. As such, Appellant respectfully requests reversal of the rejection of this claim.

Concerning dependent claims 11 and 16

Appellant respectfully submits that one or more elements of these dependent claims are not disclosed by the cited references. In particular, Appellant cannot find in the cited portions of Smith or Brossard, any disclosure, teaching or suggestion of “wherein the memory structure includes an association table having the marker and the event associated with the marker, and further including referring to the association table to identify the event to be initiated in response to detecting the marker;” as presently required by claim 11 and similarly recited in claim 16.

Although the Final Office Action did not reject claims 11 and 16 with specificity, as discussed above with respect to independent claim 22, Appellant submits that an association table included in an audio file is not disclosed, taught, or suggested by either Smith or Brossard and furthermore, is not inherent to what is taught by either Smith or Brossard.

Therefore, because Smith and Brossard fail to disclose all of the elements of claims 11 and 16, and because there would be no motivation to modify Smith in the manner the Final Office Action suggests, Appellant respectfully submits that there is no *prima facie* case of obviousness with respect to claims 11 and 16. As such, Appellant respectfully requests reversal of the rejection of these claims.

C.2. The rejection of claims 13 and 18 under 35 U.S.C. § 103(a) as being obvious using Smith in view of Brossard and further in view of Sato.

The dependent claims 13 and 18 depend from independent claims 10 and 15, either directly or indirectly, and accordingly incorporate the limitations of each of these independent claims. These dependent claims are accordingly believed to be patentable for the reasons stated herein. Thus, Appellant respectfully requests reconsideration and reversal of the rejection of these claims.

C.3. The rejection of claims 19-20 under 35 U.S.C. § 103(a) as being obvious using Smith in view of Brossard and further in view of Sato and further in view of Sagawa.

The dependent claims 19-20 depend from independent claim 15, either directly or indirectly, and accordingly incorporate the limitations of each of claim 15. These dependent claims are accordingly believed to be patentable for the reasons stated herein. Thus, Appellant respectfully requests reconsideration and reversal of the rejection of these claims.

C.4. The rejection of claims 10-13, 15-18, and 21-22 under 35 U.S.C. § 103(a) as being obvious using Seelig in view of Meier.

Concerning independent claims 10, 15, 21, and 22

Appellant respectfully submits that one or more elements of these independent claims are not disclosed by the cited references. In particular, Appellant cannot find in the cited portions of Seelig or Meier, any disclosure, teaching or suggestion of:

playing the audio sequence from the second data structure, including
*playing the sequence and initiating a wagering game-related event
in response to detecting a position in the audio sequence
corresponding to the marker*, the event being pre-associated with
the marker (emphasis added)

as presently required by claim 10 and similarly recited in claims 15, 21, and 22. Instead, Meier appears to refer to reading marker data that is embedded in the data stream. In particular, Meier provides:

streamEventHandler: A stream event handler item specifies the associated action that should be taken when a stream event occurs in the runtime session. The developer specifies the event type and the stream composite item (video or audio) as well as any parameters that should be passed to the action. Stream marker events allow the developer to trigger an action when a marker embedded in the stream is encountered by the stream playback system. For these type of events, one must also specify a string that identifies the marker that is to be trapped. Note that some networks may not support the embedding of markers in the stream assets.

Meier at col. 14, lines 33-44. In contrast, Appellant's "first data structure [] defines a marker" and is read prior to playing the "second data structure that defines an audio sequence" and includes a position that corresponds to the marker. As such, Appellant submits that Meier does not teach "reading the first data structure" that "defines a marker" and then "successively playing the audio sequences and initiating game-related events pre-associated with the respective audio sequences in response to detecting the position among the audio sequences corresponding to each respective marker in the first data structure," but rather detects the markers themselves.

Therefore, because Seelig and Meier fail to disclose all of the elements of claims 10, 15, 21, and 22, Appellant respectfully submits that there is no *prima facie* case of obviousness with respect to these claims. As such, Appellant respectfully requests reversal of the rejection of these claims.

Concerning dependent claims 11-13 and 16-18

The dependent claims 11-13 and 16-18 depend from independent claims 10 and 15, either directly or indirectly, and accordingly incorporate the limitations of each of these independent claims. These dependent claims are accordingly believed to be patentable for the reasons stated herein. Thus, Appellant respectfully requests reconsideration and reversal of the rejection of these claims.

C5. *The rejection of claims 19-20 under 35 U.S.C. § 103(a) as being obvious using Seelig in view of Meier and further in view of Sagawa.*

The dependent claims 19-20 depend from independent claim 15, either directly or indirectly, and accordingly incorporate the limitations of each of claim 15. These dependent claims are accordingly believed to be patentable for the reasons stated herein. Thus, Appellant respectfully requests reconsideration and reversal of the rejection of these claims.

SUMMARY

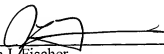
In sum, because the cited references do not disclose, teach, or suggest all of the subject matter of claims 10-22, and because there is a lack of evidence showing a motivation or suggestion to combine these references, Appellant respectfully requests reversal of all bases of rejection of all claims. Furthermore, any dependent claims not specifically addressed depend directly or indirectly on independent claims 10 or 15, and accordingly incorporate the limitations of these independent claims. As such, Appellant respectfully requests reversal of all bases of rejection of all dependent claims.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402

Date April 20, 2009

By



John L. Fischer
Reg. No. 60,900

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 20 day of April 2009.

Zhakalazyk M. Carrion

Name



Signature

8. CLAIMS APPENDIX

10. A method of conducting a wagering game, comprising:
storing an audio file associated with the wagering game in a memory structure, the audio file including a first data structure that defines a marker and a second data structure that defines an audio sequence;
reading the first data structure; and
playing the audio sequence from the second data structure, including playing the sequence and initiating a wagering game-related event in response to detecting a position in the audio sequence corresponding to the marker, the event being pre-associated with the marker.
11. The method of claim 10, wherein the memory structure includes an association table having the marker and the event associated with the marker, and further including referring to the association table to identify the event to be initiated in response to detecting the marker.
12. The method of claim 10, wherein the event is selected from a group consisting of playback of another audio file, presentation of a bitmap (.BMP) file, playback of an animation file, and activation of a mechanical feature.
13. The method of claim 10, wherein the event includes an animation sequence involving movements of a character's mouth.
14. The method of claim 10, wherein the audio file is formatted as a wave (.wav) file, the marker being an audio cue point embedded within the wave file.

15. A method of conducting a wagering game, comprising:
- storing an audio file associated with the wagering game in a memory structure, the audio file including a first data structure that defines a plurality of markers and a second data structure that defines a plurality of audio sequences; and
- playing the audio sequences from the second data structure, including successively playing the audio sequences and initiating game-related events pre-associated with the respective audio sequences in response to detecting the position among the audio sequences corresponding to each respective marker in the first data structure.
16. The method of claim 15, wherein the memory structure includes
- an association table having the markers and the events associated with the respective markers, and
- further including referring to the association table to identify the events to be initiated in response to detecting the respective markers.
17. The method of claim 15, wherein each event is selected from a group consisting of playback of another audio file, presentation of a bitmap (.BMP) file playback of an animation file, and activation of a mechanical feature.
18. The method of claim 15, wherein at least one of the events includes an animation sequence involving movements of a character's mouth.
19. The method of claim 15, wherein the event includes presentation of closed captioning that uses the markers to synchronize with the playing of the audio sequences.
20. The method of claim 15, wherein the event includes presentation of sign language that uses the markers to synchronize with the playing of the audio sequences.

21. A method of conducting a wagering game, comprising:
- accessing a single audio file associated with the wagering game, the audio file including a marker and an audio sequence;
 - reading the marker from the audio file, the marker identifying a position in the audio sequence at which a game related event is to be initiated;
 - playing the audio sequence; and
 - detecting the position in the audio sequence corresponding to the marker and initiating the game-related event corresponding to the marker.
22. A method of conducting a wagering game, comprising:
- accessing a single audio file associated with the wagering game, the audio file including a first data structure that defines a cue point, a second data structure that defines an audio sequence, and a third data structure that defines an association table, the association table associating a cue point with a game-related event;
 - reading the cue point from the first data structure in the audio file, the cue point identifying a position in the audio sequence at which the game related event is to be initiated;
 - playing the audio sequence; and
 - while playing the audio sequence, detecting the position in the audio sequence corresponding to the cue point, accessing the association table to determine the game related event associated with the cue point, and initiating the game related event as specified in the association table.

9. EVIDENCE APPENDIX

None.

10. RELATED PROCEEDINGS APPENDIX

None.